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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,454	02/24/2004	Nicholas J. Webb	WEBB-027	8559

7590 02/21/2007  
Gordon & Jacobson, P.C.  
65 Woods End Road  
Stamford, CT 06905

EXAMINER
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HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/21/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/785,454	Applicant(s) WEBB, NICHOLAS J.	
	Examiner Victor K. Hwang	Art Unit 3764	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 10, 15 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-14 and 17-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/7/04, 2/7/05, 10/3/05</u> .                                 | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

1. This application contains claims directed to the following patentably distinct species:

Species A      Figs. 1-4 (claims 3, 11, 12, 24-30, 38 and 39)

Species B      Figs. 5-8 (claims 10, 15 and 16)

The species are independent or distinct because the embodiments as disclosed are mutually exclusive, not claimed as obvious variants and are not capable of use together, and have a materially different design.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 2, 4-9, 13, 14, 17-23, 31-37 and 40-42 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

2. During a telephone conversation with Jay P. Sbrollini on February 8, 2007 a provisional election was made without traverse to prosecute the invention of Species A, claims 3, 11, 12, 24-

30, 38 and 39. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10, 15 and 16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### *Drawings*

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "24" identifying the upper portion of the outer support structure (page 7, line 17). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the pocket 73 as described in the specification at page 9, line 7. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing

sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “air-pump” of claim 22 and the “patch kit” of claim 23 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must

be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

6. The disclosure is objected to because of the following informalities:

on page 1, line 17, "assistance the" presumably should be changed to --assistance to the--;

on page 2, line 4, "applied to lower" presumably should be changed to --applied to the lower--;

on page 6, line 13, the first occurrence of "18" presumably should be changed to --16--;

on page 7, line 1, "structure s" presumably should be changed to --structures--;

on page 7, line 4, "33A, 33B, 33B" presumably should be changed to --33A, 33B, 33C--;

on page 13, line 5, "one" presumably should be changed to --on--;

on page 13, line 13, "16'" presumably should be changed to --18'--;

on page 14, lines 4 and 14, "16'" presumably should be changed to --18'--;

on page 14, line 11, "14'" presumably should be changed to --18'--; and

on page 16, lines 5, 15, 16 and 18, "16'" presumably should be changed to --18'--.

Appropriate correction is required.

***Claim Objections***

7. Claim 21 is objected to because of the following informalities: the use of the term “comprising” on line 2 results in the claim being an improper Markush claim. Presumably, “comprising” should be replaced with --consisting of:--. Appropriate correction is required.
8. Claims 32 are objected to because of the following informalities: there are two claims numbered “32”. For purposes of examination, the first claim numbered 32 will be referred to as claim 32A and the second claim numbered 32 will be referred to as claim 32B. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
10. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The recitation of a second inflatable cushion lacks antecedent basis. Presumably, claim 11 should depend from claim 8 so that proper antecedent basis is provided.
11. Claims 17-21 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. Within claims 17-20, the omitted steps are: steps for using the abdominal exercise apparatus for exercising. Claim 21 depends from claims 17 and 20, and is likewise indefinite.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 31, 33 and 36-42 are rejected under 35 U.S.C. 102(e) as being anticipated by *Kasatshko et al.* (US Pat. 6,886,204 B2).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C.

102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

*Kasatshko et al.* discloses an apparatus (Figs. 5-10) comprising a base 50 ; and a seat 20,40 attached to the base and having an upper surface that supports body parts of a user, the seat having an upper portion 40 that is coupled to a lower portion 20 by a hinge interface 30. The base and seat comprise at least three independently inflatable air chambers disposed in a resilient structure. The base 50 comprises an inflatable back wedge section 52,54 for adjusting an angle of body parts relative to horizontal. The seat comprises an inflatable chamber 56 for supporting the lumbar section of the user.



The apparatus is capable of use as an abdominal exercise apparatus. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

14. Claims 1, 2, 4-7, 13, 14, 24-37 and 40-42 are rejected under 35 U.S.C. 102(b) as being anticipated by *Lau* (US Pat. 6,331,033 B2). *Lau* discloses an apparatus comprising a base 24 having an inflatable back wedge section 24 and a flexible seat 22 having an upper surface that is substantially C-shaped disposed on the base. The seat 22 has raised sides 30,32 that form a shallow cavity 26,28 therebetween, the cavity adapted to support the upper and lower body parts of a user therein. The seat 22 comprises an outer support structure having a hinge coupling upper 26 and lower 28 portions. The hinge is a live hinge similar to that disclosed by Applicant. The seat 22 comprises at least one inflatable cushion profiled to accept the body contour of a user, supporting the lumbar section of the user, and providing a floor below the shallow cavity.

The inflatable back wedge section 24 adjusts the angle of the body parts relative to a horizontal direction. Fig. 4 shows the back wedge inflated and positioned so that the angle of the user's body is about 45 degrees, 45 degrees being up to at least 30 degrees.

Along opposite sides of the upper and lower portions of the seat are sets of connectors 40 that have hand grips (at least Figs. 8 and 9). The connectors shown in Figs. 8 and 9 have portions that are gripped by the hands of a user during use. The base 24 is removably attached to the seat 22.

The apparatus is capable of use as an abdominal exercise apparatus. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

15. Claims 1-9, 11, 12, 22, 31, 32B, 33 and 36-42 are rejected under 35 U.S.C. 102(b) as being anticipated by *Wu* (US Pat. 5,966,762). *Wu* discloses an apparatus comprising a base having an inflatable back wedge section 6 and a flexible seat 2 disposed on the base. The flexible seat has raised sides (note narrow portion 10 and ends of inflatable chambers 1) that form a shallow cavity therebetween, the cavity adapted to support the upper and lower body parts of a user therein. The inflatable back wedge section 6 adjusts the angle of the body parts relative to a horizontal direction. The seat 2 includes upper and lower portions coupled together by a hinge (see Fig. 7). The base further includes a front wedge section 4 independently inflatable from the rear wedge section 6.

The seat comprises at least one inflatable cushion 1 that provides a floor below the shallow cavity and is profiled to accept the body contour of a user. The at least one inflatable cushions comprise first inflatable cushions 1 (section 22) that support a lumbar section of the user and second inflatable cushions 1 or 40 (section 23) that support the upper legs of the user, the first and second inflatable cushions being independently inflatable. Third inflatable cushions 1 or 60 (section 21) support the upper back, neck and head of the user. An air pump 3 is used to inflate the inflatable air chambers.

The apparatus is capable of use as an abdominal exercise apparatus. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Lau* (US Pat. 6,331,033 B2). *Lau* has been discussed above, and such discussion is incorporated herein. *Lau* discloses the invention as claimed except for the method of using the apparatus for exercising (claim 17); performing at least one exercise (claim 19); performing a variety of exercises (claim 20); the variety of exercises selected from the group comprising conventional sit-ups, twisting sit-ups, elevated sit-backs, side leg lifts, and oblique muscle exercises (claim 21).

The apparatus of *Lau* supports a user in a generally reclined position. A user ingressing to the reclined position or egressing from the reclined position would necessarily require activation of the user's abdominal muscles. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the user would be performing at

least one exercise, including at least a conventional sit-up, twisting sit-up, elevated sit-back, or oblique muscle exercises while ingressing or egressing from the *Lau* apparatus.

18. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Wu* (US Pat. 5,966,762) in view of *Francis* (US Pat. 3,813,716). *Wu* has been discussed above, and such discussion is incorporated herein. *Wu* discloses the invention as claimed except for the kit comprising the apparatus of claim 1 and the air-pump for inflating the air chambers of the apparatus further comprising a patch kit for patching the air chambers.

*Francis* discloses an analogous apparatus to that of *Lau*, i.e. and air mattress, comprising a plurality of inflatable air chambers. *Francis* discloses that it is common to provide a repair kit to repair punctures in the air chambers to patch the damaged air chamber (col. 4, lines 30-42).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus and air-pump of *Wu* with a patch kit, since *Francis* teaches that a patch repair kit can be used to repair punctures in air chambers that are used in air mattresses.

### *Conclusion*

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Savage* (US Pat. 3,408,107), *Lin* (US Pat. 4,459,714), *Quillen et al.* (US Pat. 4,639,960), *Kanzler* (US Pat. 4,941,221), *Healy* (US Pat. 5,345,630), *Schwarz-Zohrer* (US Pat. 5,699,569), *Lau* (US Pat. D422,800), *Meldeau* (US Pat. 6,623,270 B1), *Barnes* (US Pat. 6,848,137 B1),

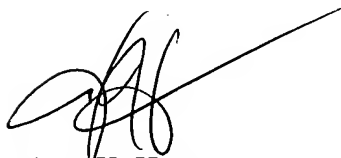
*Webb* (US Pat. App. Pub. No. 2005/0250629 A1), *Webb* (US Pat. App. Pub. No. 2005/0250630 A1), *Webb* (US Pat. D524,385 S) and *Weitzman* (US Pat. 7,074,166 B2) disclose apparatus and methods relevant to the claimed invention.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.


The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Victor K. Hwang  
February 12, 2007

  
Cary E. O'Connor  
Primary Examiner